

REMARKS

Further to Applicant's **Response to Official Action of January 8, 2007**, to remedy the inadvertent error in the specification and claims noted above, in response to the rejections of the claims in the Official Action of June 7, 2006, and in accordance with the requirements of 37 C.F.R. 1.111(b), Applicant submits the following remarks and arguments.

By comparing claim 2 to the drawings of the captioned application after filing Applicant's **Response to Official Action of January 8, 2007**, it was discovered that the references to the height and width of the implant of the present invention had been inadvertently reversed in claim 2. A review of the specification, particularly page 6, lines 16-24, revealed the source of the confusion. Specifically, the specification referred to the sides 32 defining the height of the implant of Applicant's invention as being less than the dimension of the sides 34 defining the width of the implant. However, by reference to the figures, it can be seen that this explanation of the structure of the implant is "backwards" and that the figures clearly show that the height of the implant is **greater than** the width of the implant. It was also discovered that this same paragraph of the specification referred to the implant of the present invention as being shown at reference numeral 20 in the drawings when in fact the drawings show the implant at reference numeral 22. Applicant has therefore filed this Supplemental Response to make the above amendments to the specification and to claim 2, which are intended to conform page 6 of the specification and claim 2 to the structure shown in the figures.

Applicant respectfully submits that the above amendments to the specification and to claim 2 do not constitute new matter because the structure of the implant 22 comprising Applicant's claimed stabilizer and method is clearly shown in the figures and because those figures are properly labeled with the correct reference numerals. Because the figures are correctly numbered, the above amendments merely substitute the reference numerals shown in the figures, and the clear reference to the height and the width of implant 22, for the incorrect reference numerals and references to height and width in the specification as filed. These errors were inadvertent, and one skilled in the art would clearly recognize that the figures and the description of those figures were inconsistent with each other such that the corrected paragraph of the specification set out above, and the amendments to claim 2 set out above, are corrections, not additions, to the captioned application. As a further indication of how the above amendments to the specification and to claim 2 do not constitute new matter, reference is made to page 8, lines 5-10 of the specification, stating (correctly) that:

"implant 22 is inserted into the disk space with the wide sides 32 (so that the height of implant 22 is of minimal dimension) proximate the bodies of the adjacent vertebrae and rotated in the disk space by approximately 90° using the

applicator so that the minimally-dimensioned sides 34 are proximate the bodies of the adjacent vertebrae so as to maximize the height of implant 22 in the disk space.”

As can be seen from this quotation from the specification, the above amendments to page 6 of the specification and to claim 2 are consistent not only with the drawings but also with the explanation of the structure and function of the implant of the present invention set out elsewhere in the specification and therefore do not constitute new matter. Entry of the amendment to the specification and the amendments to claim 2 is therefore respectfully requested.

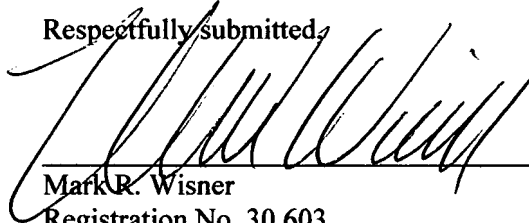
Referring now to the prior art rejections, the above amendments to the specification and claims allow Applicant to make a point relating to the patentability of the claims as follows. None of the cited references, alone or in combination, disclose, teach, or suggest a method that involves inserting an implant comprising an insert movable relative to the implant into the disk space, rotating the implant approximately 90°, and biasing the insert away from the implant. It was alleged in the Official Action of June 7, 2006 that Perren and Ralph ‘291 disclose inserting, biasing, and restraining, but there was no allegation that those references disclose rotating the implant as recited in claim 2. As Applicant noted in the Response to Official Action of January 8, 2007, by amending claim 2 to recite that the implant comprises an insert that is biased away from the remainder of the implant, Applicant made clear how claim 2 defined over both Perren and Ralph ‘291, and with the amendments to claim 2 set out above, it is requested that the prior art rejections of claim 2 be reconsidered. New claims 28-33, dependent on claim 2, add further method steps that are not disclosed in the cited references, and allowance of those new claims is therefore likewise respectfully requested.

Referring to claim 19, Applicant has amended that claim to recite that the insert that comprises a portion of the implant implanted in accordance with the method of the present invention is “movable” with respect to the implant. None of the cited Perren, Muhanna, or Ralph ‘291 patents discloses an implant with an insert that is movable as recited in amended claim 19. Reconsideration and withdrawal of the prior art rejections of claim 19 is respectfully requested in light of the arguments set out in Applicant’s **Response to Official Action of June 7, 2006** (repeated in Applicant’s **Response to Official Action of January 8, 2007**), the amendment to claim 19 set out above, and this difference between the cited references and Applicant’s claimed method.

For the reasons set out in Applicant’s Response to Official Action of January 8, 2007, claims 24-27 are also allowable. Similarly, claims 19-21, 24, and 26 are also allowable for the reasons set out in that same prior Response. Reconsideration and withdrawal of the rejection of claims 19-27 is therefore respectfully requested.

Entry of the above amendments, consideration of the remarks set out herein, allowance of the claims, and passage of the application to issuance are all respectfully requested. In the unforeseen event that there are questions and/or issues yet to be answered in this application, it is respectfully requested that Applicant's Attorney be contacted at the address and phone number set out below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark R. Wisner', is written over a horizontal line.

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